



# An Environmental Smorgasbord: From BNG to ESG

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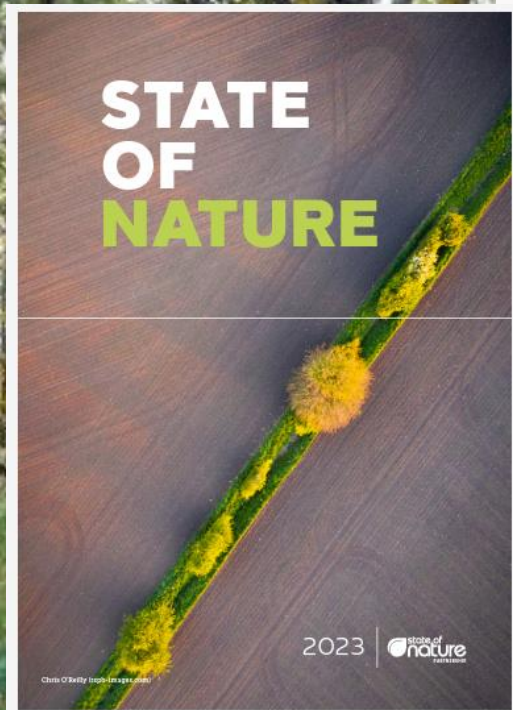
Planning Day – 6<sup>th</sup> November 2023



# Mandatory Biodiversity Net Gain



The 2023 State of Nature report shows that the abundance of species studied in the UK has declined by 19 per cent on average since records began in 1970. But while the most important natural habitats are in poor condition, work to protect landscapes has clear benefits for nature, people and climate.



# So what is BNG?

## Natural England definition

*“an approach to terrestrial development and/or land management that aims to leave the natural environment in a measurably better state”*

Natural England – Biodiversity Net Gain – more than just a number

## The Environment Act 2021

Schedule A, Part 1, para 2 defines the biodiversity gain objective as being met

*“in relation to development for which planning permission is granted if the biodiversity value attributable to the development exceeds the pre-development biodiversity value of the onsite habitat by at least the relevant percentage”.*

The relevant percentage is defined as 10% and the Act provides for the relevant percentage to be amended by regulations by the Secretary of State.

# The Environment Act 2021 BNG Framework

01

Amends Town & Country Planning Act (TCPA)

02

Minimum 10% gain required calculated using the Biodiversity Metric & approval of a biodiversity gain plan

03

Habitat secured for at least 30 years via planning obligations or conservation covenants

04

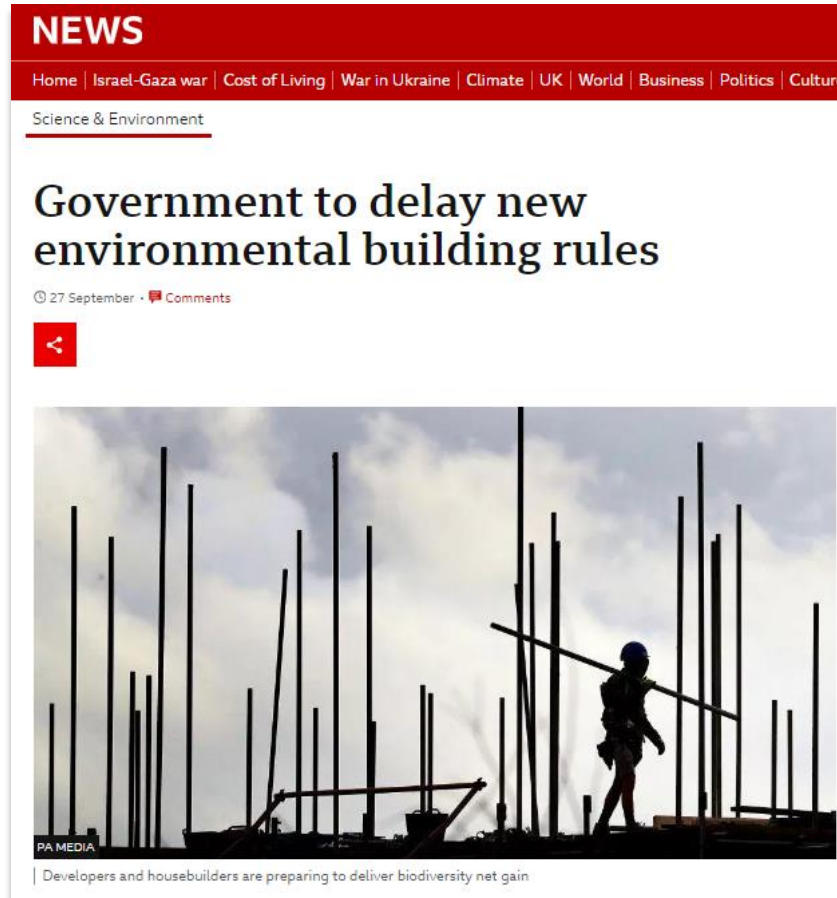
Delivered on-site, off-site or via a new statutory biodiversity credits scheme

# Many interesting issues

Variations

Small sites

Outline &  
phased



Irreplaceable  
habitat

More than  
10%?

The  
“relevant  
date”

# The Metric: a hierarchy of *value*

01

On-site  
improvements –  
highest value

02

Off-site and local  
– next best

03

Off-site and  
further away –  
lower value

04

“Credits” – last  
resort

# Significant opportunities

**“Excess gain”  
sale of BNG  
units**

**Stacking  
benefits**



**Habitat  
Banks**  
• LPA HBVs  
• Private

**Corporate  
Natural  
Capital**





# Nutrient Neutrality



Research Briefing

13 October 2023

By Felicia Rankl

## Nutrient neutrality and housing development



### Summary

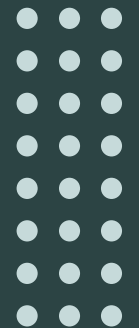
- 1 Background: What are the nutrients of concern?
- 2 The Habitats Regulations
- 3 What is 'nutrient neutrality'?
- 4 Government proposals to change the Habitats Regulations
- 5 Government actions to reduce nutrient pollution from wastewater and farming
- 6 Further reading: Committee reports and government responses

# The affluent & the effluent





# Achieving Net Zero Through Planning



NET  
ZERO



CO<sup>2</sup>



**“Planning policy needs radical reform to support Net Zero...The planning system must have an overarching requirement that all planning decisions must be taken giving full regard to the imperative of Net Zero.”**

**June 2023 Report to Parliament**

**Progress in reducing emissions**

**Climate Change Committee**

# The Present Position

- Section 19(1A) of the Planning and Compulsory Purchase Act 2004
- Section 38(6) of the Planning and Compulsory Purchase Act 2004
- Paragraph 157 of the NPPF
- R (on the application of McLennan) v Medway Council [2020] Env L.R.5

# The unlikely hero?





# The duty to have special regard

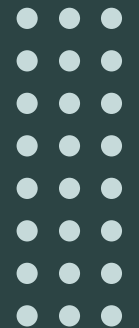
## Special regard to what?

- The mitigation of, and adaptation, to climate change
- Non exhaustive definition. Includes:
  - The 2050 net zero target in s.1 of the Climate Change Act 2008
  - Carbon budgets (s. 4 Climate Change Act 2008)
  - s. 1 – 3 of the Environment Act 2021 (environmental targets)

What does having special regard mean?



# Environmental and Social Governance



# ESG

- What is ESG?
- Why is it relevant to planning?
- What are its requirements?
- Is it actionable in law?
- What is greenwashing?
- How is greenwashing being tackled?



# Thanks!

**Estelle Dehon KC**

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